IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No.22464 of 2013

N.Karunanidhi ... Petitioner

Vs.

State of Tamilnadu
Rep. by its Inspector of Police,
C.C.I.W.Dharmapuri
(Ref. Crime No.6 of 2003) ... Respondent

Prayer: Petition filed under Section 482 of Cr.P.C., seeking to call for the records in C.C.No.243 of 2004 on the file of the learned Judicial Magistrate No.1, Dharmapuri and quash all proceedings as against the petitioner.

For Petitioner : Mr.Padmanabhan
Senior Counsel
for Mr.S.D.Ramalingam

For Respondent : Mr.C.Iyyapparaj
Additional Public Prosecutor

O R D E R

This criminal original petition has been filed seeking to call for the records in C.C.No.243 of 2004 on the file of the learned Judicial Magistrate No.1, Dharmapuri and to quash all the proceedings as against the petitioner.

2.The petitioner is arrayed as A18 in the amended charge sheet filed by the law enforcing agency. Challenging the said action, the present petition has been filed.

3.The case of the prosecution is that there were several malpractices in the Dharmapuri Town Co-operative Bank Limited, Dharmapuri and on the complaint lodged by the Deputy Registrar of the said Bank, a case in Crime No.6 of 2003 for the offences punishable under Sections 406, 408, 477-A, 109 and 120-B of IPC was registered on 21.07.2003.

4.Initially, an Enquiry Officer was appointed and enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act was conducted with regard to the malpractices in the Dharmapuri Town Co-operative Bank Limited between 15.07.2003 to 09.12.2003 and the Enquiry Officer submitted a detailed report. Thereafter, the Deputy Registrar of the said Bank lodged the complaint and the case was registered.

5.After conducting detailed investigation, the respondent submitted a final report against 17 persons before the learned Judicial Magistrate No.1, Dharmapuri and the Court took cognizance of the offence and assigned C.C.No.243 of 2004.

6.While being so, one T.Salammal, a member of the Dharmapuri Town Co-operative Bank Limited filed a petition under Section 482 of Cr.P.C. in Crl.O.P.No.5939 of 2007, before this Court seeking direction to the respondent to conduct further investigation in the case and this Court vide order dated 16.02.2008, disposed of the said petition by directing the respondent to take up further investigation in the matter.

7.Pursuant to the order of this Court, the law enforcing agency conducted further investigation and filed amended charge sheet under Section 173 (8) of Cr.P.C. in Crime No.6 of 2003 for the offence under Sections 120 B and 109 r/w. 408, 406, 465, 468, 471 and 477 (A), 406 r/w. 511 of IPC and the petitioner was arrayed as A18 in the amended charge sheet. Challenging the implication of the petitioner as A18 in the said charge sheet, this criminal original petition has been filed.

8.Mr.Padmanabhan, the learned Senior Counsel appearing for the petitioner would submit that the petitioner was not arrayed as accused in the initial charge sheet, however, he was arrayed as A18 in the amended charge sheet on the allegation that he disbursed the amount in favour of A1, A2 and A9 without verifying whether any amount is lying in their account or not. He would further submit that even the Enquiry Officer who conducted enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act, has, in his report stated that it is only due to administrative lapses. He would further submit that though the report of the enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act was submitted in the year 2003 itself, thereafter, no surcharge proceedings was initiated against the petitioner. Hence, implicating the petitioner as A18 is un-sustainable one.

9.The learned Senior Counsel appearing for the petitioner would further submit that the very same issue arose for consideration before the Madurai Bench of this Court and the Madurai Bench of this Court in its decision reported in (2008) 1

MLJ (Crl.) 810 (R.Siva Subramanian Vs. State represented by Inspector of Police, CCIW-CID, Virudhunagar) has observed that mere supervisory lapse on the part of the accused that he failed to bring it to limelight the criminal misappropriations that had taken place cannot attract the penal provisions.

10.The learned Senior Counsel appearing for the petitioner would further submit that if any administrative action is taken against the petitioner, the petitioner is ready to face the same and if any surcharge proceedings is initiated by the Authorities, the petitioner is ready to pay the amount, however, without any surcharge proceedings implicating the petitioner as accused is un-sustainable one.

11.The learned Senior Counsel appearing for the petitioner would further submit that in an earlier occasion, the petitioner filed petition under Section 482 of Cr.P.C. before this Court seeking to quash the proceedings in C.C.No.243 of 2004 as against the petitioner and this Court vide order dated 21.11.2011 dismissed the petition by granting liberty to the petitioner to file discharge petition, however, without discussing anything on merits. Hence, no res judicata will apply in the present case.

12.The learned Additional Public Prosecutor would submit that the petitioner was not arrayed as accused in the initial charge sheet and was arrayed as A18 in the amended charge sheet. He would further submit that the petitioner was incharge of the post of Secretary/ General Manager during the period from 24.07.2001 to 14.05.2001 (18 days) and from 10.02.2003 to 16.02.2003 (7 days), when one Shanmugam/ Secretary/ General Manager was on medical leave.

13.The learned Additional Public Prosecutor would further submit that the petitioner without verifying whether any amount is lying in the account of A1, A2 and A9 disbursed the transaction amount to the tune of Rs.6.10 Lakhs in favour of A1, A2 and A9. He would further submit that since the petitioner was incharge of the post of Secretary/ General Manager during the said period, he has to abide by the by-laws of the Bank. Hence, it attracts the penal provisions.

14.The learned Additional Public Prosecutor would further submit that in an earlier occasion, the petitioner filed petition under Section 482 of Cr.P.C. before this Court seeking to quash the proceedings in C.C.No.243 of 2004 as against the petitioner and this Court vide order dated 21.11.2011 dismissed the petition. Hence, the petitioner is not entitled to file another petition under Section 482 of Cr.P.C., before this Court for the very same relief.

15.Heard the submissions made on either side and perused the materials available on record.

16.The un-disputed fact is that the petitioner was not arrayed as accused in the initial charge sheet filed by the law enforcing agency. Thereafter, pursuant to the order of this Court dated 16.02.2008 made in Crl.O.P.No.5939 of 2007, the law enforcing agency conducted further investigation and filed amended charge sheet under Section 173 (8) of Cr.P.C. in Crime No.6 of 2003, wherein, the petitioner was arrayed as A18.

17.This Court perused the amended charge sheet. In the amended charge sheet it is stated that the petitioner was incharge of the post of Secretary/ General Manager during the period from 24.07.2001 to 14.05.2001 (18 days) and from 10.02.2003 to 16.02.2003 (7 days), when one Shanmugam/ Secretary/ General Manager was on medical leave. During the said period, the petitioner disbursed the transaction amount in favour of A1, A2 and A9 without verifying whether any amount is lying in the account of A1, A2 and A9 or not.

18.It is un-disputed fact that before the complaint was lodged, an Enquiry Officer was appointed and enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act was conducted with regard to the malpractices in the Dharmapuri Town Co-operative Bank Limited between 15.07.2003 to 09.12.2003 and the Enquiry Officer submitted a detailed report. The Enquiry Officer in his report has stated that the petitioner has committed administrative lapses. Further, no surcharge proceedings were initiated against the petitioner for recovery of the loss amount.

19.The decision of the Madurai Bench of this Court reported in (2008) 1 MLJ (Crl.) 810 (R.Siva Subramanian Vs. State represented by Inspector of Police, CCIW-CID, Virudhunagar) relied upon by the learned Senior Counsel appearing for the petitioner squarely apply to the present case on hand. It is useful to extract the relevant portion hereunder:

> "8.The learned Government Advocate (Criminal Side) would generally narrate the case and highlight that the petitioner no sooner he had taken charge, he ought to have looked into the facts and brought it to the knowledge of the higher officials, but he failed to disclose the irregularities committed. In this factual matrix as detailed and delineated supra, I would like to refer to Kenny's Outlines of Criminal Law, (Nineteenth Edition - Indian Economy Reprint 2002 - by J.W.Cecil Turner) which would

clearly and categorically, expatiate and list out the three stages of participation in a crime viz., (i) accessory before the fact, (ii) Principal Perpetrators and (iii) accessory after the fact. An excerpt from page No.116 of the Treatise cited supra, would run thus:

> "Section.4 - Accessories Before the Fact.
>
> 69. An accessory before the fact is a person who 'being absent at the time of the felony committed, doth yet procure, counsel, commend, or abet to commit a felony.
>
> Section.2 - Principals in the First Degree By a principal in the first degree we mean the actual offender-the man in whose guilty mind lay the latest blamable mental cause of the criminal act. Almost always, of course, he will be the man by whom this act itself was done.
>
> Section.5- Accessories after the Fact
>
> The accessory after the fact stands in a fourth and remoter degree of complicity, which in the case of misdemeanours involves no criminal responsibility at all."

9.It has to be seen as to whether the petitioner should be arrayed under anyone of the three categories. Certainly, he is not an accessory before the fact as it is not the case of the prosecution that he was a co-conspirator or an abettor. It is also not the case of the prosecution that he is the actual perpetrator of the offence by taking the jewels and repledging elsewhere. Then, the last one is accessory after the fact. No doubt, the prosecution would generally say that he failed to bring it to limelight all those misappropriations. Not to put too fine a point on it, I posed a question to both sides as to whether any of the penal sections of the Indian Penal Code could be attracted for such alleged supervisory lapse. Both sides could not cite any penal section in this regard and even in the Co-operative Societies Act also, there is no penal section which could be invoked."

20.Further no document was produced to establish that the petitioner entered into conspiracy with the other accused and the petitioner occupied the incharge post only for a period of 25 days and as a routine duty, he disbursed the transaction amount in favour of A1, A2 and A9. There may be some lapses on the part of the petitioner. The defacto complainant is entitled to collect the amount by initiating surcharge proceedings in the manner known to law.

21.In view of all the above, since no document was produced to establish that the petitioner entered into conspiracy with the other accused, I have no hesitation to allow this criminal original petition.

22.This criminal original petition is accordingly allowed and the proceedings in C.C.No.243 of 2004 on the file of the learned Judicial Magistrate No.1, Dharmapuri, is hereby quashed insofar as the petitioner is concerned. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.1,
Dharmapuri.

2.The Inspector of Police,
C.C.I.W.Dharmapuri
(Ref. Crime No.6 of 2003)

3.The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

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BR(CO)
GN(09/03/2020)